



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

APR 13 2016

Mr. Harold Ward, Acting Director  
Division of Mining and Reclamation  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street, SE  
Charleston, West Virginia 25304

Mr. Scott G. Mandirola, Director  
Division of Water and Waste Management  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street, SE  
Charleston, West Virginia 25304

Dear Mr. Ward and Mr. Mandirola:

On July 10, 2015, the West Virginia Department of Environmental Protection (WVDEP) submitted revisions to West Virginia's National Pollutant Discharge Elimination System (WV NPDES) for review and approval by the United States Environmental Protection Agency (EPA) pursuant to 40 C.F.R. § 123.62, Water Pollution Control Act. These modifications are set forth in Senate Bill 357 and signed to law by Governor Earl Ray Tomblin. WVDEP also submitted a legal certification from the West Virginia General Counsel's Office regarding West Virginia's legal authority for the revisions. In order for EPA to make a determination whether to review the proposed revisions to the WV NPDES program as a substantial revision, 40 C.F.R. § 123.62(b) (2), we request that you provide responses to the following questions. We would appreciate your response within 30 days.

- What NPDES conditions will WVDEP include in the NPDES permits, mining and non-mining, to ensure that discharges authorized by such permits will not cause or contribute to a non-compliance with West Virginia's water quality standards, numeric or narrative (specifically, W.Va. CSR § 47-2-3.2(e) & (i)), in light of SB 357?
- What is the anticipated effect from SB 357 with respect to application for, issuance, and enforcement of mining and non-mining NPDES permits?
  - What is the anticipated effect from SB 357 on the reasonable potential analysis?
- What is the anticipated effect of SB 357 on existing NPDES permits (i.e., those that were issued prior to enactment of the legislation) including but not limited to re-issuance?

- What is the anticipated effect on existing NPDES permits for non-coal mining discharges that contain the following or a similar permit condition: "This permit does not authorize a violation of West Virginia State Water Quality Standards (Title 47 CSR Series 2). . . ."
- Do you see any conflict of this permit condition with the new WV Code § 22-11-6(7)?
- Will WVDEP keep the following NPDES permit condition in the NPDES mining and non-mining permits? If not, how will these provisions be revised?

Mining permits:

- Storm water discharges
  - Such discharges shall comply with the applicable Water Quality Standards in 47 CSR 2.
- RECEIVING STREAMS
  - Based upon the stream monitoring flow data, water quality standards or other information, the Department may at any time modify the effluent limits in Section A of this permit for any discharge points if necessary, to insure compliance with water quality standards.
- Reopener Clause
  - This permit may be reopened and modified, suspended, revoked and reissued or revoked at any time if information becomes available and demonstrates that the established controls do not attain and maintain the narrative water quality criteria 47 CSR 3.2.e and 47 CSR 3.2.i.

Non-mining permits

- Subject to 47 WV CSR 10.3.4.a, the effluent or effluents covered by this permit are to be of such quality so as not to cause violation of applicable water quality standards.
- House Bill (HB) 2283 was not submitted with SB 357 as a proposed NPDES program revision on July 10, 2015. HB 2283 makes effective regulatory amendments to W. Va. CSR § 47-30-5.f, removing the following sentence: "The discharge or discharges covered by a WV/NPDES permit are to be of such quality so as not to cause violation of applicable water quality standards . . ." We request that this revision be part of the submittal package.

If you have any questions concerning this matter, please feel free to contact me or have your staff contact Mr. Brian Trulear of the NPDES Permits Branch, at 215-814-5723.

Sincerely,



Jon M. Capacasa, Director  
Water Protection Division

